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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

FLEMMING KRISTENSEN, individually and
on behalf of a class of similarly situated
individuals,

Plaintiff,

v.

CREDIT PAYMENT SERVICES INC., a
Nevada corporation, f/k/a
MYCASHNOW.COM INC.,

Defendant.

Case No. 2:12-CV-00528-KJD (PAL)

CLASS ACTION

**STIPULATED
PROTECTIVE ORDER**

Hon. Kent J. Dawson

Magistrate Peggy A. Leen

1 The Parties, through their respective counsel of record, hereby stipulate to entry of the following
2 proposed Protective Order:

3 1. PURPOSES AND LIMITATIONS

4 Disclosures and discovery activity in this action may involve the production of confidential,
5 proprietary, or private information for which special protection from public disclosure and from use for
6 any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby
7 stipulate to and petition the Court to enter the following Stipulated Protective Order (the "Order"). The
8 Parties acknowledge that this Order does not confer blanket protections on all disclosures or responses
9 to discovery and that the protection it affords from public disclosure and use extends only to the limited
10 information or items that are entitled to confidential treatment under the applicable legal principles.

11 2. DEFINITIONS

12 2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or
13 items under this Order.

14 2.2 "CONFIDENTIAL" Information or Items: information that qualifies for protection under
15 Federal Rule of Civil Procedure 26(c) including trade secrets, know-how, proprietary data, marketing
16 information, contracts, financial information, security information, surveillance information and/or
17 similar commercially sensitive business information or data which the designating party in good faith
18 believes in fact is confidential or that unprotected disclosures might result in economic or competitive
19 injury, and which is not publicly known and cannot be ascertained from an inspection of publicly
20 available documents, materials or devices. This includes compilations of publicly available discovery
21 materials, which would not be known publicly in a compiled form. "CONFIDENTIAL" Information
22 or Items also includes highly personal or sensitive facts and personal identity information to the extent
23 such facts and information are not a matter of public record or in the public domain.

24 2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as
25 their support staff).

26 2.4 Designating Party: a Party or Non-Party that designates information or items that it
27 produces in disclosures or in responses to discovery as "CONFIDENTIAL."
28

1 2.5 Disclosure or Discovery Material: all information or items, regardless of the medium or
 2 manner in which they are generated, stored, or maintained (including, among other things, testimony,
 3 transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery
 4 in this matter.

5 2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the
 6 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
 7 consultant in this action.

8 2.7 House Counsel: attorneys who are employees of a Party to this action. House Counsel does
 9 not include Outside Counsel of Record or any other outside counsel.

10 2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity
 11 not named as a Party to this action.

12 2.9 Outside Counsel of Record: attorneys who are not employees of a Party to this action but
 13 are retained to represent or advise a Party to this action and have appeared in this action on behalf of
 14 that Party or are affiliated with a law firm which has appeared on behalf of that party.

15 2.10 Party: any Party to this action, including all of its officers and directors.

16 2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
 17 this action.

18 2.12 Professional Vendors: persons or entities that provide litigation support services (e.g.,
 19 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
 20 or retrieving data in any form or medium) and their employees and subcontractors.

21 2.13 Protected Material: any Disclosure or Discovery Material that is designated as
 22 "CONFIDENTIAL."

23 2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
 24 Party.

25 3. SCOPE

26 The protections conferred by this Order cover not only Protected Material (as defined above),
 27 but also: (1) any information copied or extracted from Protected Material; (2) all copies, excerpts,
 28

1 summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
2 presentations by Parties or their Counsel that might reveal Protected Material. However, the
3 protections conferred by this Stipulation and Order do not cover the following information: (a) any
4 information that is in the public domain at the time of disclosure to a Receiving Party or becomes part
5 of the public domain after its disclosure to a Receiving Party as a result of publication not involving a
6 violation of this Order, including becoming part of the public record through trial or otherwise; and (b)
7 any information known to the Receiving Party prior to the disclosure or obtained by the Receiving
8 Party after the disclosure from a source who obtained the information lawfully and under no obligation
9 of confidentiality to the Designating Party. Any use of Protected Material at trial shall be governed by
10 a separate agreement or order.

11 4. DURATION

12 Even after final disposition of this litigation, the confidentiality obligations imposed by this
13 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
14 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
15 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
16 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
17 limits for filing any motions or applications for extension of time pursuant to applicable law.

18 5. DESIGNATING PROTECTED MATERIAL

19 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
20 Party that designates information or items for protection under this Order must take care to limit any
21 such designation to specific material that qualifies under the appropriate standards.

22 Mass, indiscriminate, or routinized designations of confidentiality are prohibited. Designations
23 that are shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
24 unnecessarily encumber the case development process or to impose unnecessary expenses and burdens
25 on other parties) may expose the Designating Party to sanctions when and if such sanctions are merited
26 under controlling law.
27
28

1 If it comes to a Designating Party's attention that information or items that it designated for
2 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
3 that it is withdrawing the mistaken designation.

4 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as
5 otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under
6 this Order must be clearly so designated before the material is disclosed or produced.

7 Designation in conformity with this Order requires:

8 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
9 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the
10 legend "CONFIDENTIAL" to each page that contains protected material.

11 A Party or Non-Party that makes original documents or materials available for inspection need
12 not designate them for protection until after the inspecting Party has indicated which material it would
13 like copied and produced. During the inspection and before the designation, all of the material made
14 available for inspection may be deemed "CONFIDENTIAL" at the discretion of the Producing Party.
15 After the inspecting Party has identified the documents it wants copied and produced, the Producing
16 Party must determine which documents qualify for protection under this Order. Then, before
17 producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" legend to
18 each page that contains Protected Material.

19 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
20 Designating Party identify on the record, before the close of the deposition, hearing, or other
21 proceeding, all protected testimony; or, before the close of the deposition, hearing, or other proceeding,
22 the Designating Party may invoke on the record a right to identify protected testimony within 21 days
23 of receiving a transcript of the deposition, hearing, or other proceeding. During the deposition,
24 hearing, or other proceeding and before the designation, all of testimony shall be deemed
25 "CONFIDENTIAL."

26 (c) for information produced in some form other than documentary and for any other tangible
27 items, that the Producing Party affix in a prominent place on the exterior of the container or containers
28

1 in which the information or item is stored the legend "CONFIDENTIAL." If only a portion or portions
2 of the information or item warrant protection, the Producing Party, to the extent practicable, shall
3 identify the protected portion(s).

4 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
5 qualified information or items does not, standing alone, waive the Designating Party's right to secure
6 protection under this Order for such material. Upon timely correction of a designation, the Receiving
7 Party must make reasonable efforts to assure that the material is treated in accordance with the
8 provisions of this Order. However, no Party shall be found to have violated this Order for failing to
9 maintain the confidentiality of material during a time when that material has not been designated as
10 CONFIDENTIAL, even when the failure to so designate was inadvertent and where the material is
11 subsequently designated as CONFIDENTIAL.

12
13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of
15 confidentiality at any time. A Party or Non-Party shall not be obligated to challenge the propriety of a
16 designation of confidentiality at the time made, and failure to do so shall not preclude a subsequent
17 challenge thereto at any time during the course of this litigation.

18 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by
19 providing written notice of each designation it is challenging and describing the basis for each
20 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite
21 that the challenge to confidentiality is being made in accordance with this specific paragraph of the
22 Protective Order. The Parties shall attempt to resolve each challenge in good faith and must begin the
23 process by conferring directly (in voice to voice dialogue; other forms of communication are not
24 sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must
25 explain the basis for its belief that the confidentiality designation was not proper and must give the
26 Designating Party an opportunity to review the designated material, to reconsider the circumstances,
27 and, if no change in designation is offered, to explain the basis for the chosen designation. A
28 Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this

1 meet and confer process first or establishes that the Designating Party is unwilling to participate in the
2 meet and confer process in a timely manner.

3 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court intervention,
4 the Challenging Party shall file and serve a motion to remove confidentiality within 21 days of the
5 Parties' meet and confer, in the event it is unsuccessful. Any motion brought pursuant to this provision
6 must be accompanied by a competent declaration affirming that the movant has complied with the meet
7 and confer requirements imposed by the preceding paragraph.

8 The burden of persuasion in any such challenge proceeding shall be on the Designating Party.
9 Frivolous motions, and those made for an improper purpose (e.g., to harass or impose unnecessary
10 expenses and burdens on other Parties) may expose the moving Party to sanctions when and if such
11 sanctions are merited under controlling law. All Parties shall continue to afford the material in
12 question the level of protection to which it is entitled under the Designating Party's designation until
13 the Court rules on the challenge.
14

15 7. ACCESS TO AND USE OF PROTECTED MATERIAL

16 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
17 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
18 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the
19 categories of persons and under the conditions described in this Order. When the litigation has been
20 terminated, a Receiving Party must comply with the provisions of section 13 below.

21 Protected Material must be stored and maintained by a Receiving Party at a location and in a
22 secure manner that ensures that access is limited to the persons authorized under this Order. This
23 Order does not affect or limit the Designating Party's right or ability to handle its own Protected
24 Materials in whatever manner it chooses in connection with use in its business or otherwise, subject
25 only to the potential waiver of any Confidentiality designations.

26 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
27 Court or permitted in writing by the Designating Party, a Receiving Party may disclose any information
28 or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
2 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
3 litigation;

4 (b) the officers, directors, and employees (including House Counsel) of the Receiving Party to
5 whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
6 and Agreement to Be Bound" (Exhibit A);

7 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably
8 necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound"
9 (Exhibit A);

10 (d) the Court and its personnel;

11 (e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and
12 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
13 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

14 (f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary
15 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
16 otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition
17 testimony or exhibits to depositions that reveal Protected Material must be separately bound by the
18 Court reporter and may not be disclosed to anyone except as permitted under this Order;

19 (g) the author or recipient of a document containing the information or a custodian or other
20 person who otherwise possessed or knew the information who have signed the "Acknowledgment and
21 Agreement to Be Bound" (Exhibit A);

22 (h) An individual named Plaintiff, with disclosure only to the extent reasonably necessary for
23 the named Plaintiff's participation in the case as determined in good faith by Plaintiff's counsel,
24 provided the named Plaintiff has signed the "Acknowledgement and Agreement to Be Bound" (Exhibit
25 A); and
26

27 (i) Other persons only by written consent of the Designating Party or upon order of the Court
28 and on such conditions as may be agreed or ordered.

1 8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
2 LITIGATION

3 If a Party is served with a subpoena or a court order issued in other litigation that compels
4 disclosure of any information or items designated in this action as "CONFIDENTIAL," that Party
5 must:

6 (a) promptly notify in writing the Designating Party. Such notification shall include a copy of
7 the subpoena or court order;

8 (b) promptly notify in writing the party who caused the subpoena or order to issue in the other
9 litigation that some or all of the material covered by the subpoena or order is subject to this Protective
10 Order. Such notification shall include a copy of this Order; and

11 (c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating
12 Party whose Protected Material may be affected.

13 If the Designating Party timely seeks a protective order, the Party served with the subpoena or
14 court order shall not produce any information designated in this action as "CONFIDENTIAL" before a
15 determination by the court from which the subpoena or order issued, unless the Party has obtained the
16 Designating Party's permission. The Designating Party shall bear the burden and expense of seeking
17 protection in that court of its confidential material – and nothing in these provisions should be
18 construed as authorizing or encouraging a Receiving Party or a Designating Party in this action to
19 disobey a lawful directive from another court.
20

21 9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN
22 THIS LITIGATION

23 The terms of this Order are applicable to information produced by a Non-Party in this action
24 and designated as "CONFIDENTIAL." Such information produced by Non-Parties in connection with
25 this litigation is protected by the remedies and relief provided by this Order. Nothing in these
26 provisions should be construed as prohibiting a Non-Party from seeking additional protections from the
27 Court.
28

1 10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

2 If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected
3 Material to any person or in any circumstance not authorized under this Order, the Receiving Party
4 must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its
5 best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or
6 persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request
7 such person or persons to execute the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

8 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED
9 MATERIAL

10 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
11 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
12 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
13 modify whatever procedure may be established in an e-discovery order that provides for production
14 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), the Parties agree
15 that the inadvertent disclosure of material, information, or communication covered by the attorney-
16 client privilege, work product doctrine, or other valid privilege or immunity is not, by itself, a waiver
17 of any potential protection in this or any other Federal or State proceeding. However, nothing herein
18 restricts the right of the Receiving Party to challenge the Producing Party's claim of privilege if
19 appropriate within a reasonable time after receiving notice of the inadvertent or mistaken disclosure.
20

21 12. MISCELLANEOUS

22 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person or entity to
23 seek its modification by the Court in the future.

24 12.2. No Greater Protection of Specific Documents. No Party or Non-Party may withhold
25 information from discovery on the ground that it requires protection greater than that afforded by this
26 Order unless the Party or Non-Party moves for an order providing such special protection.

27 12.3 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no
28 Party waives any right it otherwise would have to object to disclosing or producing any information or

1 item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any
 2 ground to the use in evidence of any of the material covered by this Order.

3 12.4 Filing Protected Material. Without written permission from the Designating Party or a
 4 court order secured after appropriate notice to all interested persons, a Party may not file in the public
 5 record in this action any Protected Material. A Party that seeks to file under seal any Protected
 6 Material must comply with Civil Local Rule 10-5. Protected Material may only be filed under seal
 7 pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

8 13. FINAL DISPOSITION

9 Within 60 days after the final disposition of this action, as defined in Section 4 above, upon the
 10 written request of the Designating Party, each Receiving Party must return all Protected Material to the
 11 Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes
 12 all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of
 13 the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy
 14 of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda,
 15 correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and
 16 expert work product, even if such materials contain Protected Material. Any such archival copies that
 17 contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4.
 18 IT IS SO STIPULATED.

19 DATED:

20 January 10, 2013

21 By: /s/ John C. Ochoa

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DATED:

January 10, 2013

By: /s/ Timothy Walton

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Attorneys for Defendant Credit Payment Services,
Inc.

11
12 SO ORDERED.

13
14 DATED: Lcpwct{"33."2013

15 
16 UNITED STATES MAGISTRATE JUDGE

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the District of Nevada on _____ [date] in the case of *Kristensen v. Credit Payment Services, Inc.*, Case No. 2:12-CV-00528-KJD (PAL). I agree to comply with and to be bound by all the terms of the Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Protective Order to any person or entity except in strict compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of the Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____